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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - x
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

DEBTORS' MOTION FOR ORDERS PURSUANT TO BANKRUPTCY CODE
SECTIONS 105, 363 AND 364 (I)(A) APPROVING PROCEDURES IN
CONNECTION WITH SALE OF ALL OR SUBSTANTIALLY ALL OF THE
BUSINESS OR ADDITIONAL POST-PETITION FINANCING FOR THE
BUSINESS, (B) AUTHORIZING DEBTORS TO ENTER INTO STALKING
HORSE OR FINANCING AGREEMENTS IN CONNECTION WITH GOING
CONCERN TRANSACTIONS OR STALKING HORSE AGREEMENTS IN
CONNECTION WITH STORE CLOSING AND MISCELLANEOUS ASSET SALES,
(C) APPROVING THE PAYMENT OF TERMINATION FEES IN CONNECTION
THEREWITH, AND (D) SETTING AUCTION AND HEARING DATES, (II)
APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF ALL
INTERESTS AND (III) GRANTING RELATED RELIEF

The debtors and debtors in possession in the above-captioned jointly administered cases (collectively, the "Debtors")¹ hereby move (the "Motion"), pursuant to sections 105, 363 and 364 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 4001, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of orders (I)(A) approving procedures in connection with soliciting bids for a sale of all or substantially all of the business or additional post-petition financing for the business, (B) authorizing the Debtors to enter into stalking horse or financing agreements in connection with Going Concern Transactions (as defined below) or stalking horse agreements in connection with Store Closing and Miscellaneous Asset Sales (each as defined below) and,

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, INC. (n/a), XSstuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

(C) approving the Debtors' payment of a Termination Fee (as defined below) in connection therewith, and (D) scheduling Auction and Hearing Dates (as defined below), (II) approving the sale of the Debtors' assets free and clear of all interests, and (III) granting related relief. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363 and 364 and Bankruptcy Rules 4001, 6004 and 6006.

BACKGROUND

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. Based in Richmond, Virginia, the Debtors constitute a leading specialty retailer of consumer electronics and operate large nationwide electronics stores throughout the United States and Puerto Rico that sell, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

RELIEF REQUESTED

7. By this Motion, the Debtors seek (I) entry of an order, substantially in the form attached hereto (the "Bidding Procedures Order") (A) approving procedures for (i) submitting bids for any or all of the

Debtors' assets or businesses or submitting financing alternatives (the "Bids"), (ii) conducting an auction (the "Auction") with respect to any assets or businesses on which the Debtors receive more than one Bid ("Competing Bids"); (B) authorizing, but not requiring, the Debtors to (i) enter into a "stalking horse" agreement(s) (each a "Stalking Horse Agreement") with a bidder (the "Stalking Horse Bidder") for the purpose of establishing a minimum acceptable bid at which to begin the Going Concern Auction and, if in the best interests of the Debtors' estates, Store Closing and Miscellaneous Asset Auctions (each as defined below); (ii) provide a Stalking Horse Bidder with a fee (the "Termination Fee") up to, but not greater than 2.0%, of the cash purchase price set forth in the Stalking Horse Agreement and (iii) enter into financing agreements; and (C) scheduling the Auctions for January 13, 2009 (and, if necessary, January 14, 2009) and a hearing (the "Hearing") with respect to any Bid(s) or proposals accepted by the Debtors for January 16, 2009, (II) entry of one or more orders approving the sale of the Debtors or all or certain of the Debtors' assets free and clear of all

interests and/or additional post-petition financing for the business, and (III) entry of one or more orders granting related relief.

BASIS FOR RELIEF

A. The Debtors' Pre-petition Restructuring Efforts.

8. As of the end of the Debtors' last fiscal year, the Debtors had experienced two consecutive years with operational losses. These losses were attributable to a number of factors similarly affecting retailers across the United States and Canada, including tightening of and disruption in credit markets and the resulting impact on consumer spending, as well as the continuing decline in margins for consumer electronic products and competition from other retailers like Amazon.com, Best Buy and Wal-Mart.

9. Prior to the Petition Date, these losses were funded by increased borrowings under the Debtors' pre-petition secured revolving credit facility, leading to outstanding borrowings as of the Petition of not less than \$898 million. These outstanding borrowings, along with reductions in the borrowing base under the

prepetition facility, ultimately reduced the Debtors' available liquidity and jeopardized continued operations.

10. In response, the Debtors developed and began to institute an aggressive program designed to improve operating performance and address liquidity concerns. As part of this program, the Debtors began the process of conducting sales at and closing 155 of their stores (the "Initial Store Closing Sales"). In addition, the Debtors and their advisors aggressively pursued various restructuring alternatives, including an equity investment, a refinancing of their prepetition secured credit facility, additional financing, and a sale of some or all of the Debtors' assets.

11. To this end, the Debtors retained Rothschild Inc. ("Rothschild") as their investment banker and FTI Consulting, Inc. ("FTI") as their financial advisor.

12. Before Rothschild was retained, the Debtors had retained Goldman Sachs & Co. to assist the Debtors with evaluating a proposal from Blockbuster, Inc. After the Blockbuster proposal was rescinded, Goldman

Sachs continued to explore strategic alternatives and otherwise assist the Company until September 2008.

13. Thereafter, Rothschild was retained to continue to pursue strategic alternatives, including sources of equity investment capital, as well as strategic partners or going concern purchasers. Prior to the Petition Date, Rothschild actively marketed the Debtors' businesses and operations and compiled a list of potential purchasers and strategic partners for the Debtors businesses or any portion thereof. Additionally, Rothschild's affiliate has been actively marketing the Debtors' Canadian businesses and assets.

14. FTI was retained as the Debtors' financial advisor and to assist the Debtors with financing alternatives, including efforts to obtain alternate financing or refinance the Debtors' prepetition secured indebtedness and obtaining additional sources of financing.

15. Although the Debtors attempted to accomplish their restructuring objectives out-of-court, they were unsuccessful. Therefore, the Debtors filed these chapter 11 cases.

B. The DIP Facility And The DIP Amendment.

16. As part of their restructuring, with FTI's assistance, the Debtors obtained post-petition financing (the "DIP Facility") from certain of their prepetition lenders (the "DIP Lenders"), including Bank of America, N.A., as agent (the "DIP Agent"). The DIP Facility was comprised of two parts -- refinancing of prepetition secured debt and provision for additional borrowings.

17. The DIP Facility also contained certain restructuring milestones. Among others, the DIP Facility required that the Debtors obtain a Term Loan (as defined in the DIP Credit Agreement²) in an amount not less than \$75 million by January 17, 2009. See DIP Credit Agreement § 5.15. Additionally, the DIP Facility required that the Debtors solicit bids and obtain a stalking horse bid for the liquidation sale of their assets by early March 2009. See DIP Credit Agreement § 5.18(d).

² "DIP Credit Agreement" means the Senior Secured, Super Priority, Debtor-In-Possession Credit Agreement dated as of November 12, 2008.

18. Before the Debtors proceeded with approval of the DIP Facility on a final basis, the Creditors' Committee informally objected to the DIP Facility. Thereafter, the DIP Agent and Lenders, the Creditors' Committee, and the Debtors engaged in extensive negotiations over various terms of the DIP Facility. As part of a resolution with the Creditors' Committee, the DIP Agent and Lenders and the Debtors agreed to amend the DIP Facility by, among other things, deleting DIP Credit Agreement § 5.15 and substantially modifying § 5.18(d) (the "DIP Amendment"). See DIP Amendment at 3, ¶4.

19. Pursuant to the DIP Amendment, the DIP Agent and Lenders increased the Debtors availability by removing certain reserves and relaxing minimum availability requirements. Additionally, the DIP Agent and Lenders also removed the requirement that the Debtors obtain a Term Loan and altered the bid requirements for a sale of the Debtors' assets.

20. The DIP Amendment altered the sale process by requiring that the Debtors adhere to a revised and expedited process. Specifically, the

Debtors were required to distribute information packets and file this Motion by no later than January 5, 2009. The Amendment also set the January 16, 2009 hearing as the outside date by which this Court must approve a sale of the Debtors' business and assets.

C. The Debtors' Marketing Efforts.

21. Using the DIP Facility to backstop their operations, since the Petition Date, the Debtors continued to pursue various restructuring alternatives, including a stand-alone plan, transactions with strategic partners and sales of all or certain aspects of their business.

22. Since the Petition Date, Rothschild has been actively contacting strategic partners, industry leaders, and other potential purchasers concerning a going concern sale of the Debtors. Rothschild's efforts resulted in interest from multiple third parties. Indeed, various third parties signed confidentiality agreements and conducted due diligence.

23. Although the Debtors have not received a formal offer, over the past several days, the Debtors have been engaged in significant discussions, meetings,

and negotiations with two highly motivated and interested parties concerning the terms of a Going Concern Transaction. Specifically, the interested parties are considering additional financing to allow the Debtors to sustain operations and move forward with a subsequent restructuring through a stand-alone plan and/or purchasing the Debtors or all or substantially all of the Debtors' assets pursuant to Bankruptcy Code section 363 or as part of a plan transaction.

24. In addition to ongoing communications with the Debtors, at least one interested party has been involved in face-to-face meetings and negotiations with the DIP Agent and certain DIP Lenders, as well as some of the Debtors' largest merchandise vendors. Following these meetings, the Debtors received positive feedback from all parties involved in such meetings.

25. Based on the foregoing, the Debtors remain hopeful that they will receive a Bid contemplating a Going Concern Transaction.

26. In addition to these efforts, the Debtors also retained DJM Realty Services, Inc. as their real estate consultant to develop and implement an

action plan with respect to owned and lease real property.

D. Need For Expedited Relief.

27. The Debtors seek approval of an expedited process for two primary reasons.

28. First, under the DIP Facility, as amended by the DIP Amendment, the Debtors are required to seek approval of the expedited process described in this Motion.

29. Second, the Debtors (and the retail industry as a whole) are facing macro-economic conditions that are among the worst in history. Poor macro-economic conditions have caused declines in consumer confidence and consumer spending, both of which directly and significantly impact the Debtors' businesses. Indeed, notwithstanding conservative revenue projections at the outset of these cases, the Debtors' revenues have been below their projections. Similarly, revenue generated from the Initial Store Closing Sales was sluggish and did not generate the liquidity infusion projected by the Debtors and the agent conducting the Initial Store Closing Sales.

However, management has been able to manage expenses in a manner that has resulted in the Debtors exceeding their availability and liquidity forecasts.

30. Poor macro-economic conditions and the Debtors' worse than anticipated performance also contributed to further erosion of vendor confidence. As a result, many vendors, including some of the Debtors' key merchandise vendors, were unwilling to relax strict trade terms or provide meaningful trade credit. Indeed, many vendors continued to provide goods or services only on cash in advance terms.

31. In light of the foregoing and in particular the results of the Initial Store Closing Sales, the Debtors, the DIP Agent and Lenders, and the Creditors' Committee grew increasingly concerned that future appraisals of DIP Lenders' collateral would be lower than expected. A lower than expected appraisal would directly impact the Debtors' availability under DIP Facility, which, in turn, could strangle the Debtors ability to continue to operate.

32. Faced with these conditions, the Debtors, after consultation with their advisors, as well as the

Creditors' Committee and the DIP Agent, determined that an immediate sale of their business as a going concern or additional financing to facilitate a successful restructuring was in the best interests of creditors and other parties in interest.

33. Thus, the Debtors filed this Motion seeking approval of a process, including bid procedures, pursuant to which the Debtors will solicit a Stalking Horse Bidder or Bidders for all or part of their business. As part of the process, the Debtors will solicit offers for a sale of some or all of the Debtors' assets as a going concern, a proposal for a sale or other transaction under a plan, or a financing proposal that will provide the Debtors with additional liquidity to complete a stand-alone restructuring, a going concern sale, or a plan transaction (the "Going Concern Transactions") under Bankruptcy Code sections 105, 363 and 364. Additionally, to ensure compliance with their obligations under the DIP Facility, the Debtors will solicit offers for (1) a sale of the Debtors' inventory through store closings and liquidations (the "Store Closing Sales") and (2) a sale of certain of the

Debtors' assets such as any inventory at any stores, store, warehouse, and distribution center leases, owned real property, the firedogSM assets, including related internet operations conducted through www.firedog.com, the Debtors other internet operations, including operations conducted through www.circuitcity.com, corporate airplanes, and other miscellaneous assets (the "Miscellaneous Asset Sales") under Bankruptcy Code sections 105 and 363. Although the Debtors are seeking any and all proposals related to their businesses and assets, as discussed above, the Debtors remain hopeful that they will receive a proposal for a Going Concern Transaction that will be the highest or otherwise best proposal.

34. As part of a Going Concern Transaction, the Debtors may receive a proposal for all or portions of their Canadian operations or assets. Because the process by which the Debtors will sell their Canadian operations and assets is being managed by the Canadian court, if the Debtors receive such a proposal, the Debtors will coordinate with the monitor and other

parties involved in the Canadian restructuring process and the Canadian court.

35. The Debtors believe that conducting an auction with respect to each of Going Concern Transaction, Store Closing Sale, and Miscellaneous Asset Sale (each an "Auction") and a final auction (the "Final Auction", and collectively with each Auction, the "Auctions") among the bidders submitting the highest or otherwise best offers will enable them to best assess their restructuring alternatives and maximize value and minimize expenses incurred.

36. To help ensure the Debtors receive the highest or otherwise best proposal for their businesses and assets, the Debtors developed the Bidding Procedures.

BIDDING PROCEDURES³

A. The Auctions.

37. **The Bid Deadline and the Auctions.** The Debtors propose that all proposals must be submitted on or before January 10, 2009 at 5:00 p.m. (Eastern) (the "Bid Deadline"). The Debtors propose that on January 13, 2009, and, if necessary, January 14, 2009, they will hold the Auctions among those bidders that have submitted qualified proposals for any of the Auctions in accordance with the Bidding Procedures (collectively, the "Qualified Bidders"). The Auctions will take place at the offices of Skadden, Arps, Slate, Meagher & Flom, LLP at 4 Times Square, New York, NY 10036 beginning at 10:00 a.m. (Eastern). The Qualified Bidders who wish to participate in an Auction, or their authorized representative, must be present, in person or by phone, for the Auctions.

38. By agreement with the DIP Agent and the Creditors' Committee, the Debtors are only permitted to

³ This section of the Motion constitutes a summary of the Bidding Procedures. In the event there is a conflict between the Motion and the Bidding Procedures, the Bidding Procedures shall control.

extend the Bid Deadline and the start of any Auction after consultation with counsel to the Creditors' Committee and counsel to the DIP Agent. However, the Debtors are not permitted to extend the Bid Deadline beyond January 12, 2008 without DIP Agent's and the Creditors' Committee's consent or further order of the Court.

39. **Going Concern Auction.** The Debtors will tentatively commence the first auction (the "Going Concern Auction") on January 13, 2009, or, if necessary, January 14, 2009, at 10:00 a.m. (Eastern) among those Qualified Bidders that submit qualified proposals for the Going Concern Auction in accordance with the Bidding Procedures (the "Qualified Going Concern Bidders"). During the Going Concern Auction the Debtors will accept competing proposals to purchase some or all of the Debtors' assets as a going concern, a proposal for a sale or other transaction under a plan, or a financing proposal that will provide the Debtors with additional liquidity to complete a stand-alone restructuring, a going concern sale, or a plan transaction. Bidding in the Going Concern Auction will remain open until all

Qualified Going Concern Bidders who opt to bid have submitted their highest or otherwise best proposal for a Going Concern Transaction.

40. **Store Closing Auction.** The Debtors will tentatively commence the second auction (the "Store Closing Auction") on January 13, 2009 at 1:00 p.m. (Eastern) or following the close of bidding in the Going Concern Auction among those Qualified Bidders that submit qualified proposals for the Store Closing Auction in accordance with the Bidding Procedures (the "Qualified Store Closing Bidders"). During the Store Closing Auction the Debtors will accept competing proposals to conduct Store Closing Sales with respect to, among other things, the inventory and fixtures and equipment located at some or all of the Debtors' retail stores and distribution centers. Bidding in the Store Closing Auction will remain open until all Qualified Store Closing Bidders who opt to bid have submitted their highest or otherwise best proposals for the Store Closing Sales.

41. **Miscellaneous Asset Auction.** The Debtors will tentatively commence the third auction (the

Miscellaneous Asset Auction) on January 13, 2009 at 4:00 p.m. (Eastern) or following the close of bidding in the Store Closing Auction among those Qualified Bidders that submit qualified proposals for the Miscellaneous Asset Auction in accordance with the Bidding Procedures (the "Qualified Miscellaneous Asset Bidders"). During the Miscellaneous Asset Auction, the Debtors will accept competing proposals to purchase any or all of the Debtors' assets, including, for example, any inventory, store, warehouse and distribution center leases, owned real property, the firedogSM assets, including related internet operations conducted through www.firedog.com, the Debtors other internet operations, including operations conducted through www.circuitcity.com, corporate airplanes, and other miscellaneous assets. The Miscellaneous Asset Auction will be conducted with respect to each asset on which the Debtors receive a proposal. Bidding in the Miscellaneous Asset Auction will remain open until all Qualified Miscellaneous Asset Bidders who opt to bid have submitted their highest or otherwise best proposal for the Miscellaneous Asset Sales.

42. **Final Auction.** Finally, upon the conclusion of bidding in the Going Concern Auction, the Store Closing Auction, and the Miscellaneous Asset Auction, the Debtors, after consultation with counsel to the DIP Agent and counsel to the Creditors' Committee, will determine which proposal or combination of proposals provides the Debtors, their estates and creditors with the highest or otherwise best offer(s). Upon such announcement, the Debtors will then commence an auction (the "Final Auction") in which the successful bidders at the Going Concern, the Store Closing, and Miscellaneous Asset Auctions may participate. Bidding at the Final Auction will continue until such time as each bidder or combination of bidders has submitted its highest or otherwise best proposal.

43. At the conclusion of the Final Auction, the Debtors, after consultation with counsel to the DIP Agent and counsel to the Creditors' Committee, will announce the bidder or bidders submitting the proposal(s) that they have determined constitute the highest or otherwise best proposals (each such proposal, a "Successful Bid" and each party submitting each

Successful Bid, a "Successful Bidder") and close the Auctions.

B. The Bidding Procedures.

44. The Debtors intend to implement procedures substantially similar to the procedures (the "Bidding Procedures") attached as Exhibit A to the Bidding Procedures Order with respect to the Qualified Bidders and conducting the Going Concern, Store Closing, Miscellaneous Asset and Final Auctions. The Debtors reserve their right to modify such procedures as necessary or as they deem appropriate, in consultation with counsel to the DIP Agent and counsel to the Creditors' Committee, to maximize value for their estates and creditors. In addition, the Debtors, in consultation with counsel to the DIP Agent and counsel to the Creditors' Committee, reserve their right to withdraw certain assets that do not constitute a material portion of the business from the Auctions at any time prior to Court approval of any proposal concerning such assets. However, the Debtors have agreed that they will not move the date of the Hearing absent approval from the DIP Agent and the Creditors'

Committee or further order of the Court. The Debtors believe that such procedures are appropriate and will maximize the recovery for the Debtors and their estates in connection with the various Auctions.

C. Termination Fees.

45. The Debtors believe that in order to entice potential bidders to establish a floor price for any asset or business and the terms of such offer, they should be authorized (after consultation with counsel to the DIP Agent and counsel to the Creditors' Committee) to offer bidders a fee in the event that a bidder is chosen as a Stalking Horse Bidder but is ultimately outbid at an Auction (a "Termination Fee"). Accordingly, the Debtors request that the Bankruptcy Court approve a Termination Fee of no more than 2% of the cash purchase price payable on such terms and conditions as set forth in any Stalking Horse Agreement that the Debtors enter into on or prior to January 13, 2009. In addition, any Termination Fee will only be paid if (1) the Stalking Horse Bidder is not the Successful Bidder at the Final Auction, (2) the Stalking Horse Bidder agrees to serve as a back-up bidder and close the transaction

contemplated by the Stalking Horse Agreement (as may be modified, including, without limitation, modifications as to price, as of the Stalking Horse Bidder's last proposal at any Auction) in the event the transaction with the Successful Bidder does not close, and (3) the transaction proposed by the Successful Bidder actually closes. In the event the Successful Bidder does not close, the Stalking Horse Bidder will be deemed to be the Successful Bidder.

46. In no event shall any Termination Fee be payable if the Stalking Horse Agreement contains a "due diligence" or financing contingency, and the Debtors shall not be permitted to offer two Termination Fees with respect to any proposal covering the same assets.

D. Assumption And Assignment Of Contracts And Leases.

47. The Debtors will file a schedule of cure amounts (the "Cure Schedule") due to counterparties to Contracts and Leases (as defined herein) on or before January 7, 2009. The Debtors propose that unless a party to a Contract or Lease files an objection on or before January 15, 2009 at 12:00 noon (ET) to the Motion asserting a different cure amount than that listed on

the Cure Schedule, then, except to the extent expressly set forth in the Bidding Procedures Order, such party should be forever barred from asserting a cure amount different from that set forth on the Cure Schedule.

48. To ensure that the counterparties to Contracts and Leases receive advance notice of the assumption and assignment of any Contracts and Leases, on or before January 13, 2009, the Debtors will provide the counterparty to any Contracts and Leases sought to be assumed and assigned pursuant to a Going Concern Transaction or a Store Closing or Miscellaneous Asset Sale with a notice of potential purchaser substantially in the form attached to the Bidding Procedures Order as Exhibit B. The Debtors will concurrently post a list of those Contracts and Leases subject to Potential Purchaser Notices on the website for the Debtors' claims and noticing agent, www.kccllc.net/circuitcity.

49. The Potential Purchaser Notice will identify any potential transaction party as potential parties to which the Contracts and Leases would be assigned. In addition, the Potential Purchaser Notice would provide a means by which the counterparties to the

Contracts and Leases to be assigned could obtain information related to adequate assurance of future performance.

50. Finally, the Debtors propose that the counterparties to any such Contract or Lease be required to file an objection to the assumption and/or assignment of the Contracts and Leases by January 15, 2008 at 12:00 noon (ET), and such parties would be required to state, with specificity, the legal and factual basis of any objection.

APPLICABLE AUTHORITY

I. THE BIDDING PROCEDURES ARE REASONABLE AND APPROPRIATE.

51. Bankruptcy Code section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Moreover, Bankruptcy Code section 105(a) provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

52. The Debtors believe that the Bidding Procedures are appropriate under Bankruptcy Code sections 105 and 363 to ensure that the bidding and process is fair and reasonable and will yield the maximum value for their estates and creditors. Initially, the Bidding Procedures permit the Debtors to maximize the value of their assets by allowing three auctions, the Going Concern Auction, the Store Closing Auction, and the Miscellaneous Asset Auction. At the Final Auction, the Debtors will potentially be able to further increase the recovery for their estates by combining the proposals received in the prior auctions and permitting additional bidding by parties that were successful in such prior auctions. In addition, the Bidding Procedures set deadlines for obtaining a Stalking Horse Bidder or Bidders, conducting an auction and holding a hearing with respect to the transactions proposed herein.

53. As set forth above, the Debtors presently face the possibility of continued financial deterioration. The Debtors have managed to obtain sufficient liquidity to conduct the process proposed

herein. However, under the terms of the DIP Facility, the Debtors are (i) required to complete the sale process as requested herein and (ii) may not have sufficient liquidity to operate much beyond the dates established thereby. Thus, the Debtors believe that they must be permitted to conduct the process in the manner and on the timetable set forth herein and in the Bidding Procedures.

54. Accordingly, the Debtors believe the Court should approve the Bidding Procedures, including the dates established thereby for, inter alia, the Auctions and the Hearing. Similar procedures have been previously approved by this Court in other cases. See, e.g., In re Ceyoniq, Inc., Case No. 02-85887 (RGM) (Bankr. E.D. Va. Jan. 30, 2003); In re The Rowe Companies, Case No. 06-11142 (SSM) (Bankr. E.D. Va. Dec. 20, 2006).

II. APPROVAL OF GOING CONCERN TRANSACTIONS OR STORE CLOSING AND MISCELLANEOUS ASSET SALES IS WARRANTED UNDER BANKRUPTCY CODE SECTIONS 105(A) AND 363(B)(1).

55. As set forth above, Bankruptcy Code section 363(b)(1) authorizes a trustee to "use, sell, or lease" property of the estate with the Court's

approval. 11 U.S.C. § 363(b)(1). Assets of the Debtors may be sold outside of the ordinary course of business, pursuant to Bankruptcy Code section 363(b)(1), if a sound business purpose exists for doing so. In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)(citing Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986)); see also In re W.A. Mallory Co., Inc., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997).

56. To satisfy the "sound business purpose test," the debtor must demonstrate that (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) the sale was proposed in good faith; (3) the purchase price is fair and reasonable; and (4) adequate and reasonable notice of the sale has been provided. In re WBQ P'ship, 189 B.R. at 102.

57. Based upon the results of their exhaustive analysis of the Debtors' ongoing and future business prospects, the Debtors' management and advisors have concluded that the sale of all or substantially all of their assets and businesses in accordance with the procedures set forth in the Bidding Procedures is one alternative that will maximize recoveries to the estates

and stop further deterioration of the Debtors' businesses. Maximizing asset value and preventing further business deterioration are sound business purposes that warrant authorizing the proposed Sale.

58. First, as set forth herein, a process is required by the DIP Facility and is necessary to enable the Debtors to maximize value for the estates given their liquidity situation.

59. Second, by permitting proposals for substantially all of the Debtors' assets or for certain specific assets, whether for sale as a going concern or for liquidation, the Debtors believe that they will be afforded the necessary flexibility and thereby will have the greatest potential of maximizing the value of their businesses.

60. Third, the sale of any of the Debtors' assets or businesses will be subject to competing bids, thereby enhancing the Debtors' ability to receive the highest or otherwise best value for their businesses. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through

the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

61. Fourth, and finally, all creditors and parties in interest will receive adequate notice under the circumstances of the Bidding Procedures and the Hearing as set forth below. In light of the circumstances, such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these cases, those parties potentially interested in bidding on the Debtors' assets and businesses and others whose interests are potentially implicated by the proposed Sales.

III. APPROVAL OF ASSUMPTION AND ASSIGNMENT OF THE DEBTORS' CONTRACTS AND LEASES IS WARRANTED UNDER BANKRUPTCY CODE SECTION 365.

62. Bankruptcy Code section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). A debtor's determination to assume and assign or reject an executory contract or unexpired lease is governed by the "business judgment"

standard. See Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1046-47 (4th Cir. 1985), cert. denied sub nom., Lubrizol Enters., Inc. v. Canfield, 475 U.S. 1057 (1986); In re Extraction Technologies of VA, L.L.C., 296 B.R. 393, 399 (Bankr. E.D. Va. 2001).

63. Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992); ; see In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that a debtor's decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice)

64. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See Comm. Of Asbestos-

Related Litigants and/or Creditors v. Johns-Manville

Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

65. As set forth above, the Debtors have clearly articulated a sound business purpose for seeking the relief sought in the Motion and have thus satisfied the business judgment test. The assumption and assignment of the Debtors' executory contracts and unexpired leases (the "Contracts and Leases") at the Auctions and the accompanying proposed Bidding Procedures are clearly designed to maximize the value of the Contracts and Leases for the Debtors' estates.

66. Additionally, section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. It provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

67. Courts give the phrase "adequate assurance of future performance" a "practical, pragmatic construction." EBG Midtown S. Corp. v. Mcharen/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992), aff'd, 993 F.2d 300 (2d Cir. 1993) (presence of adequate assurance should be "determined under the facts of each particular case").

68. To the extent that any defaults exist under any of the Contracts and Leases that are to be assumed and assigned in connection with a Going Concern Transaction or Store Closing or Miscellaneous Asset Sale, the Debtors or the counterparty to such transaction

would cure any default required to be cured under Bankruptcy Code section 365.

69. The Bidding Procedures are also designed to ensure that any potential transaction party has the financial resources to perform under the Contracts and Leases and are required under the Bidding Procedures to provide adequate assurance of future performance under any Contracts and Leases for which they render a bid. Moreover, if necessary, the Debtors will adduce facts at the Hearing demonstrating the financial wherewithal of any transaction party, and their willingness and ability to perform under the Contracts and Leases to be assumed and assigned to them.

70. Accordingly, the Debtors have determined that the relief requested in the Motion is in their best interests and the best interests of their estates, creditors and parties in interest.

IV. THE TERMINATION FEE REQUESTED HEREIN IS REASONABLE AND SHOULD BE APPROVED.

71. In connection with Going Concern Transactions or Store Closing or Miscellaneous Asset

Sales, the Court should authorize the Debtors to pay the Termination Fee identified herein.

72. Agreements to provide break-up fees are designed to compensate a potential acquirer who serves as a catalyst that may attract higher and better offers, and have been approved in bankruptcy to encourage bidding. See In re Ryan, 261 B.R. 867, 870 (Bankr. E.D. Va. 2001). Break-up fees can be advantageous to both buyers and sellers because they encourage bidding to ensure that sellers receive the highest or otherwise best offer for sellers while compensating the buyer for the risk of being outbid. See id.

73. Break-up fees are allowed as an administrative expense claim against the estate if they satisfy the standard of section 503(b)(1). In re Tropea, 352 B.R. 766, 768 (Bankr. N.D.W.Va. 2006). Thus, the fee must reflect the actual and necessary cost of preserving the estate. See 11 U.S.C. § 503(b)(1). See also In re Tropea, 352 B.R. at 768. In Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.), 181 F.3d 527 (3d Cir. 1999), the United States Court of Appeals for the Third Circuit expanded on the

application of the section 503(b)(1) standard to break-up fees. The Third Circuit Court of Appeals held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some postpetition benefit to the debtor's estate. See id. at 533; see also In re Lamb, 2002 WL 31508913 (Bankr. D. Md. 2002) (implicitly adopting the administrative expense standard set forth in O'Brien).

74. The O'Brien Court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. Second, when the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders

can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth."

Id.

75. The proposed Termination Fee is appropriate under Bankruptcy Code section 503. The Termination Fee is fair and reasonable in amount, particularly in view of the efforts that will have to be expended by the stalking horse bidder. Moreover, the Termination Fee will enable the Debtors to secure an adequate floor for the Auctions and, thus, insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid, a clear benefit to the Debtors' estates.

76. In sum, the Debtors' ability to offer the Termination Fee enables them to ensure the sale of the Debtors' assets to a contractually-committed bidder at a price that they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. Thus, the Termination Fee should be approved.

V. ANY PURCHASER SHOULD BE GRANTED THE PROTECTION OF BANKRUPTCY CODE SECTION 363(m).

77. The disposition of the Debtors' businesses or assets pursuant to the terms reflected in any purchase agreement (a "Purchase Agreement") or store closing agency agreement (a "Store Closing Agency Agreement") that results from the bids submitted for or at the Auctions, pursuant to the Bidding Procedures, represents an accepted method for the sale of retail merchandise that has been approved in numerous chapter 11 cases of retailers. See, e.g., In re The Rowe Companies, Case No. 06-11142 (SSM)(Bankr. E.D. Va. Dec. 20, 2006); In re Tweeter Home Entertainment Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. Jun. 27, 2007); In re Ultimate Electronics, Case No. 05-10104 (PJW)(Bankr. D. Del. Mar. 8, 2005). Under the Bidding Procedures, any Purchase Agreement would be negotiated at arm's-length. Similarly, a Store Closing Agency Agreement would be negotiated at arm's-length between the Debtors and the store closing agent. These negotiations will likely involve substantial time and energy by the parties and their professionals, and any

Purchase Agreement or Store Agency Agreement will undoubtedly reflect give-and-take and compromises by both sides.

78. Accordingly, the Debtors should be permitted to enter into any Purchase Agreement(s) with any purchaser(s) or any Store Closing Agency Agreement(s) with the selected store closing agent(s).

79. At the Hearing, the Debtors intend to present evidence that a Store Agency Agreement and/or Purchase Agreement were negotiated at arm's-length and in good faith, after other parties and their qualifications and proposals were considered, and after the Auction process. Thus, the Debtors will seek and respectfully request that this Court find that any purchaser and/or store closing agent acted in good faith within the meaning of Bankruptcy Code section 363(m).

80. Specifically, Bankruptcy Code section 363(m) provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith,

whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

81. While the Bankruptcy Code does not define "good faith", the Fourth Circuit Court of Appeals has "adopt[ed] the traditional equitable definition that has been adopted by various courts of appeal: 'one who purchases the assets for value, in good faith, and without notice of adverse claims.'" Willemain v. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985)(citations omitted).

82. Additionally, the Bidding Procedures ensure that a prospective purchaser or store closing agent will not be able to exert any undue influence over the Debtors. Under the circumstances, and after considering the record to be presented by the Debtors at the Hearing, this Court should find that (i) the sale of the Debtors' assets, whether pursuant to a Purchase Agreement, Store Agency Agreement, or otherwise, is the result of good faith arm's-length negotiations, and (ii) the ultimate purchaser is entitled to all of the protections of Bankruptcy Code section 363(m).

VI. ASSETS SOLD PURSUANT TO ANY GOING CONCERN TRANSACTION, STORE CLOSING SALE, OR MISCELLANEOUS ASSET SALE SHOULD BE FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES UNDER BANKRUPTCY CODE SECTION 363(f).

83. To facilitate a going concern sale, a sale of store inventory or a sale of miscellaneous assets, the Debtors request authorization to sell such property free and clear of any and all interests, including claims, liens, and encumbrances that may be asserted against such property.

84. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any interest in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

85. Section 363(f) permits the sale of estate property free and clear of interests if any one of the five conditions above is met. See, e.g., In re Laines, 352 B.R. 410, 414-15 (Bankr. E.D. Va. 2005).

86. Courts have held that the authority of a debtor to sell assets free and clear of interests is broad and should be read expansively. See In re TWA, Inc., 322 F.3d 283, 289 (3d Cir. 2003); see also United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573, 582 (4th Cir. W. Va. 1996) (holding that the phrase "any interest in property" includes more than just in rem interests); In re P.K.R. Convalescent Centers, Inc., 189 B.R. 90, 94 (Bankr. E.D. Va. 1995) ("As the plain meaning of the statute demonstrates, § 363 covers more situations than just sales involving liens."). Moreover, courts have noted that the purpose of the "free and clear" language is to allow the debtor to obtain a maximum recovery on its assets in the

marketplace. See In re TWA, Inc., 2001 Bankr. LEXIS 723, at *8-*10 (Bankr. D. Del. Mar. 27, 2001).

87. Accordingly, this Court should authorize the Debtors to sell their inventory, assets or businesses free and clear of any and all interests, including claims, liens, and encumbrances, that may be asserted by any parties, with any such claims, liens, and encumbrances attaching to the net proceeds of the Going Concern Transactions, Store Closing Sales, or Miscellaneous Asset Sales in the same order and priority as they exist against the such inventory, assets or businesses and in accordance with the terms and provisions of the DIP Facility.

VII. THE COURT SHOULD INVALIDATE ANY RESTRICTIONS IN RESTRICTIVE DOCUMENTS THAT MAY IMPAIR THE DEBTORS' ABILITY TO CONDUCT STORE CLOSING SALES.

88. In addition, any Store Closing Sales should be free from various restrictions that would impair such sales. The Debtors' stores are located on properties that are owned and leased by the Debtors. Thus, a Store Closing Sale may be inconsistent with certain provisions of such leases or other documents (the "Restrictive Documents") with respect to any of

such leased premises (the "Premises") that are intended to protect the image of a shopping center or mall or avoid disruption of normal commerce, including provisions purporting to restrict or prohibit the Debtors from conducting store closing, going out of business, inventory liquidation, or similar sales (the "Anti-Alienation Provisions").

89. Store closing or liquidation sales, such as the sales described herein, are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently approved by courts, despite provisions of recorded documents or agreements purporting to forbid such sales in the ordinary course of business. Indeed, Anti-Alienation Provisions in leases have been deemed unenforceable in other chapter 11 cases as impermissible restraints on a debtor's ability to maximize the value of its assets under Bankruptcy Code section 363. See In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); In re Ames Dep't Stores, Inc., 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (finding that "to enforce the anti-GOB sale clause of the [l]ease would contravene overriding federal policy requiring Debtors to maximize

estate assets by imposing additional constraints never envisioned by Congress"); see also In re Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (finding anti-going-out-of-business sales clause in lease unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (same).

90. Thus, the Court should ensure that no clause in any of the Restrictive Documents for the Premises is an impediment to a Store Closing Sale, the associated store closures, or the activities connected therewith. To the extent that such Anti-Alienation Provisions exist in any Restrictive Documents, they should not be permitted to interfere with, or otherwise restrict the Debtors or the store closing agent from conducting a Store Closing Sale or the associated closing of stores.

VIII. STORE CLOSING SALES SHOULD BE EXEMPT FROM CERTAIN FEDERAL, STATE, AND LOCAL LAWS, STATUTES, RULES AND ORDINANCES RELATED TO STORE CLOSING SALES.

91. The states in which any Store Closing Sales will or may take place may have certain requirements governing the conduct of store closing,

liquidation or other inventory clearance sales, including, but not limited to, state and local statutes and regulations regarding bulk sale restrictions, augmentation limitations that would otherwise apply to a Store Closing Sale and consumer fraud laws, with the exception of deceptive advertising laws (the "Liquidation Sale Laws"). Typical statutes and regulations provide that if a liquidation or bankruptcy sale is court authorized, however, a company need not comply with these Liquidation Sale Laws. Moreover, pursuant to Bankruptcy Code section 105, the Court has the authority to permit a Store Closing Sale to proceed notwithstanding contrary Liquidation Sale Laws. See 11 U.S.C. § 105.

92. The Debtors, therefore, request that, pursuant to Bankruptcy Code § 105(a), this Court authorize the Debtors to conduct a Store Closing Sale without the necessity of, and the delay associated with, complying with the Liquidation Sale Laws.

93. Because the Debtors and their assets are subject to this Court's jurisdiction, this Court will be able to supervise a Store Closing Sale and the

liquidation of store inventory. A Store Closing Sale is a legitimate method by which the Debtors can maximize the return from the sale of store inventory for the benefit of their estates and creditors. Moreover, creditors are adequately protected by the notice of this Motion and the jurisdiction and supervision of this Court. Accordingly, this Court should dispense with any requirement that the Debtors comply with technical requirements that are not intended to curtail persons from conducting store closing sales with bankruptcy court supervision, including bulk sales laws.

94. Moreover, 28 U.S.C. § 959, which requires trustees (and, thus, debtors in possession) to otherwise comply with state and other laws in performance of their duties, does not apply to a Store Closing Sale. Courts have held that 28 U.S.C. § 959 does not apply to debtors or their agents when they are liquidating assets. See, e.g., Cal. State Bd. of Equalization v. Goggin, 191 F.2d 726 (9th Cir. 1951) (holding that 28 U.S.C. § 959 does not apply to transactions that are in the nature of liquidation), cert. denied, 342 U.S. 909 (1952); see also In re Borne Chem. Co., Inc., 54 B.R. 1260, 135

(Bankr. D.N.J. 1984) (holding that 28 U.S.C. § 959(b) is applicable only when property is being managed or operated for purpose of continuing operations).

95. Even if state or local law does not expressly except bankruptcy sales from its ambit, the Debtors submit, to the extent that such state or local law conflicts with federal bankruptcy laws, that such state or local law is preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief otherwise available under Bankruptcy Code section 363. In concert with this premise, bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. See, e.g., In re Shenango Group, Inc., 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) ("Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code [A] state statute [] cannot place burdens on them where the result would contradict the priorities established by the federal bankruptcy code."). While preemption of state law is not always appropriate, as when the

protection of public health and safety is involved, it is appropriate when, as here, the only state laws involved concern economic regulation. In re Baker & Drake, 35 F.3d 1348, 1353 (9th Cir. 1994)("[F]ederal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety.").

96. Here, Bankruptcy Code section 363, which requires debtors to operate their businesses in a way that maximizes recoveries for creditors, will be severely undermined if the Court does not provide for the waiver of the Liquidation Sale Laws. Similar relief has been granted in other bankruptcy cases. See, e.g., In re FAO, Inc., Case No. 03-61826 (LK) (Bankr. D. Del.); In re Golf Am. Stores, Inc., Case No. 02-12313 (PJW) (Bankr. D. Del.); In re Bradlees, Inc., Case No. 00-16033 (BRL) (Bankr. S.D.N.Y.); In re Big V Stores, Case No. 00-4372 (PJW) (Bankr. D. Del.).

97. Importantly, given the supervision of this Court, the requested waiver will not unduly undermine state and local requirements that would otherwise apply to a Store Closing Sale. The Debtors

only request that this Court authorize the Debtors and/or the store closing agent to conduct a Store Closing Sale without the necessity of, and the delay associated with, obtaining various state licenses or permits, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, conducting a Store Closing Sale as store closings or similar type sales, or transferring merchandise to or between stores. The Debtors fully intend to be bound by and comply with remaining statutes and regulations, such as health and safety laws.

98. The Debtors also request that no other person or entity, including (but not limited to) any lessor or federal, state, or local agency, department or governmental authority, be allowed to take any action to prevent, interfere with, or otherwise hinder consummation of a Store Closing Sale, or the advertising and promotion (including through the posting of signs) of such Store Closing Sale.

IX. WAIVER OF THE TEN-DAY STAYS PROVIDED BY BANKRUPTCY RULES 6004 AND 6006 SHOULD BE WAIVED FOR ANY AND ALL ORDERS APPROVING SALE(S) OF THE DEBTORS' ASSETS.

99. Bankruptcy Rule 6004(h) provides that:

"[a]n order authorizing the use, sale, or lease of property is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise."

Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) provides that: "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under Sec. 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d).

100. The Debtors request that the Court waive the ten-day stays of Bankruptcy Rules 6004 and 6006 with respect to the Going Concern Transactions or the Store Closing and Miscellaneous Asset Sales following entry of this any and all orders approving such transactions. By waiving such requirements, the Debtors and any purchaser will be able to immediately close the transactions approved by such orders, which will in turn save the Debtors continued accrual of administrative expenses and thereby benefit the Debtors' estates.

X. APPROVAL OF A GOING CONCERN TRANSACTION WHEREBY THE DEBTORS WILL OBTAIN ADDITIONAL POST-PETITION FINANCING IS WARRANTED UNDER BANKRUPTCY CODE SECTIONS 105 AND 364

101. As part of the process described herein, the Debtors are in discussion with interested parties over the terms of Going Concern Transactions, including additional post-petition financing. If these discussions are successful, the Debtors may obtain a proposal for additional financing that could enable the Debtors to reorganize under a stand-alone plan or as part of a Bankruptcy Code sale or plan transaction.

102. Bankruptcy Code section 364 authorizes the Debtors to obtain financing. In particular, if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code section 503(b)(1), then the Court, after notice and a hearing, may authorize the debtor to obtain credit or incur debt. 11 U.S.C. § 364(c). Moreover, Bankruptcy Code section 105(a) authorizes the Court to enter any orders necessary or appropriate in aid of reorganization. 11 U.S.C. § 105(a).

103. Pursuant to Bankruptcy Code section 364(c), a debtor's decision to incur secured debt is governed by the business judgment standard. See, e.g., In re Ames Dept. Stores, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990)(noting that, with respect to post-petition credit, courts "permit debtors in possession to exercise their best business judgment consistent with their fiduciary duties"); see also 3 Collier on Bankruptcy ¶ 364.03, at 364-7-18 (15th ed. rev. 1999).

104. Should the Debtors receive and determine that a Going Concern Transaction for financing is the highest or otherwise best proposal, the Debtors should be authorized to enter into such financing on terms agreed to among the Debtors and any purchaser that are negotiated in good faith. Such financing would be in the best interests of the Debtors and their estates, creditors, and other parties in interest because the financing would permit the Debtors to continue as a going concern and realize the highest or otherwise best value for their businesses.

105. The Debtors also request that this Court schedule interim and final hearings on any such

financing proposal. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to obtain credit under Bankruptcy Code section 364 may not be commenced earlier than 15 days after the service of such motion. Fed. R. Bankr. P. 4001(b), (c). Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable to the debtor's estate. Id.

106. Here, the Debtors are requesting that this Court hold an interim hearing on any Going Concern Transaction that provides financing to the Debtors on January 16, 2009. Thereafter, the Debtors will obtain a subsequent hearing date for final approval of any such financing.

NOTICE

107. Notice of this Motion to the extent it seeks entry of the Bidding Procedures Order has been provided to those parties who have requested notice pursuant to Bankruptcy Rule 2002 and the Core Group (as defined in the Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007,

and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 130; the "Case Management Order")). Notice of the Motion and entry of the Bidding Procedures Order will be provided to those parties entitled to notice under the Case Management Order, as well as (a) all entities known to have expressed an interest in a transaction regarding the debtors' assets, stores or inventory during the past three (3) months; (b) all landlords and entities known to have an interest in any of the assets to be sold; and (c) all federal, state, and local regulatory or taxing authorities or recording offices that have a reasonably known interest in the relief requested through the Motion. The Debtors submit that, under the circumstances, no other or further notice need be given.

WAIVER OF MEMORANDUM OF LAW

108. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the

requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

109. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) enter an Order, substantially in the form annexed hereto, granting the relief requested herein, (ii) enter one or more orders approving any and all sales following completion of the Auctions, and (iii) such other and further relief as may be just and proper.

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